

**ALPERN MYERS STUART LLC**

ATTORNEYS AT LAW

14 NORTH SIERRA MADRE STREET, SUITE A  
COLORADO SPRINGS, COLORADO 80903-3211

TELEPHONE (719) 471-7955

FACSIMILE (719) 638-1794

E-MAIL [mattwerner@coloradolawyers.com](mailto:mattwerner@coloradolawyers.com)

RECEIVED  
FEDERAL ELECTION  
COMMISSION  
OFFICE OF GENERAL  
COUNSEL

*Of Counsel*

*M. Allen Ziegler, Jr.*

*Stephen D. Harris*

*John L. Cyboron*

*Howard J. Alpern  
Kenneth P. Myers  
Dana D. Stuart  
Lisa Tormoen Hickey  
Matthew J. Werner  
Virginia V. Koulchitzka*

2009 JAN 21 P 3 28

January 13, 2009

Donald F. McGahn II  
Chairman  
Federal Election Commission  
999 E Street, NW  
Washington, DC 20463

Re: Bentley B. Rayburn  
Colorado Fifth Congressional District  
2008 Republican Primary

Dear Chairman McGahn:

Please allow this letter to serve as a formal complaint to the Federal Election Commission against Bentley B. Rayburn, formerly a candidate for U.S. Congress in Colorado's Fifth Congressional District, his campaign manager, Michael Hesse, and his campaign organization, Committee to Elect Rayburn for Congress. Mr. Rayburn, Mr. Hesse and his organization have failed to disclose benefits they received in the form of a poll conducted by a local building association.

On or about May 28, 2008, Mr. Rayburn entered into a written agreement with another candidate for U.S. Congress, Jeff Crank, to jointly conduct a poll. See memorandum titled *Methodology and Procedures for CO CD 5 Primary Polling* from Hill Research Consultants dated May 21, 2008, and signed May 28, 2008, enclosed as Exhibit A. While Messrs. Rayburn and Crank signed the agreement, several news reports, including the enclosed, indicate that the Colorado Springs Housing & Building Association ("HBA") facilitated and paid for the poll. See *Colorado Springs Gazette*, *Crank's Deal With Rayburn Falls Apart*, June 17, 2008, enclosed as Exhibit B.

Further evidence that the HBA paid for the poll and that Mr. Rayburn should have either paid for the poll or shown the benefit received from the HBA in his contribution disclosures is in Mr. Crank's disclosures. According to Mr. Crank's FEC report filed on July 31, 2008, his campaign paid the HBA \$3,750 for the Hill Research Consultants poll. See Schedule B, FEC Form 3 filed by the Jeff Crank for Congress campaign, July 31, 2008, relevant excerpts of which are enclosed as Exhibit C. The FEC reports filed by the Committee to Elect Rayburn for Congress show no similar payment to the HBA. The HBA does not appear to be an entity that can make contributions to federal candidates.

10044271824

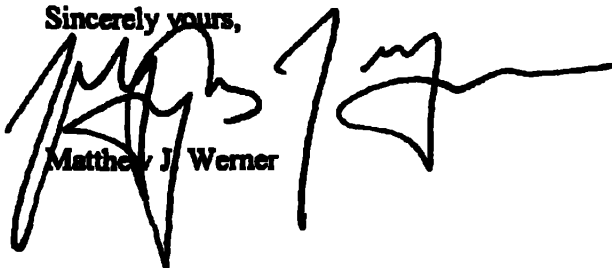
**ALPERN MYERS STUART LLC**

December 10, 2008  
Page 2 of 2

Mr. Rayburn terminated his campaign committee on or about September 30, 2008, without accounting for the HBA poll in any manner. Please investigate this disclosure issue and/or illegal campaign contribution issue.

Please do not hesitate to contact me if you would like to discuss this matter further.

Sincerely yours,

A handwritten signature in black ink, appearing to read 'Matthew J. Werner', with a long horizontal flourish extending to the right.

Matthew J. Werner

Enclosures

10044271825

Colorado Springs Gazette

June 17, 2008

CONGRESSIONAL RACE

## CRANK'S DEAL WITH RAYBURN FALLS APART

*Rayburn backs out of deal after poll gave Crank a big advantage*

BY PAM ZUBECK THE GAZETTE

A deal that would have winnowed the Republican field from three to two in the 5th Congressional District has fallen apart, with Bentley Rayburn calling it "a disaster" and pulling out of the agreement Monday after a poll gave Jeff Crank a 17-point advantage.

Rayburn, a former Air Force officer, and Crank, a Colorado Springs businessman, agreed in late May to conduct a poll jointly with the understanding that whoever prevailed would face Rep. Doug Lamborn in the Aug. 12 primary election.

The deal was instigated by the Colorado Springs Housing and Building Association, which proposed conducting a scientific poll to determine whether Crank or Rayburn was running stronger "in order to mutually agree on a candidate to move forward against Lamborn," Rayburn's press release said.

Lamborn was elected two years ago after a six-way primary that included both Crank and Rayburn.

"While our polling data has shown and continues to show that we can win in a three-way race against Lamborn and Crank — a two-way race is certainly preferable," Rayburn's campaign said in the release. It also said the campaign opposes a "good ol' boys" back room deal but felt a poll might show an indication of who rank and file voters support.

"Too often our party has allowed a small group of 'kingmakers' to make the candidate decisions that resulted in our party's loss of elections on all levels," the press release said.

But, the campaign said, "The implementation of this poll was a disaster." Polling wasn't conducted on time, and though polling was supposed to be suspended, it somehow was resumed, Rayburn's team said.

"This gross violation of the fundamental operating procedures has led our campaign to lose confidence in the entire effort," the press release said, adding a three-way race for the nomination "is all but inevitable."

"It's very unfortunate that Bentley Rayburn has chosen to violate his word," Crank's campaign manager Alan Philip said.

"The fact of the matter is the contract stipulates that anything over a four-point margin compels the loser to pull out," Philip said, adding that Rayburn's allegations that Crank's polling firm acted improperly are unfounded.

"This is clearly the case that they saw the results and they're looking to get out of it," he said. "The data is conclusive and compelling."

—  
CONTACT THE WRITER:  
636-0238 or  
pam.zubeck@gazette.com

10044271826

**SCHEDULE B (FEC Form 3)  
ITEMIZED DISBURSEMENTS**

 Use separate schedule(s)  
for each category of the  
Detailed Summary Page

 FOR LINE NUMBER:  
(check only one)

PAGE 32/43

<input checked="" type="checkbox"/> 17	<input type="checkbox"/> 18	<input type="checkbox"/> 19a	<input type="checkbox"/> 19b
20a	20b	20c	21

Any information copied from such Reports and Statements may not be sold or used by any person for the purpose of soliciting contributions or for commercial purposes, other than using the name and address of any political committee to solicit contributions from such committee

 NAME OF COMMITTEE (in Full)  
JEFF CRANK FOR CONGRESS

A

 Full Name (Last, First, Middle Initial)  
TARGET

Mailing Address 335 H ACADEMY

 City  
COLORADO SPRINGS

 State  
CO

 Zip Code  
80908

 Purpose of Disbursement  
FLAG FOR PARADE

Candidate Name

 Category/  
Type

 Office Sought: House  
Senate  
President

 Disbursement For: 2008  
X Primary General  
Other (specify)

State: District

 Transaction ID: SB17.557L1  
Date of Disbursement

07 ' 01 ' 2008

Amount of Each Disbursement This Period

20.00

 Refund or Disposal of Excess  
Contributions Required Under  
11 C.F.R. 400.63  
[RECORD ITEM]

B

 Full Name (Last, First, Middle Initial)  
JULIE HERRMANN

Mailing Address 10355 DOVER ST #138

 City  
WESTMINSTER

 State  
CO

 Zip Code  
80021

 Purpose of Disbursement  
In-Mid - TELEPHONE

Candidate Name

 Category/  
Type

 Office Sought: House  
Senate  
President

 Disbursement For: 2008  
X Primary General  
Other (specify)

State: District

 Transaction ID: SB17.5518  
Date of Disbursement

07 ' 23 ' 2008

Amount of Each Disbursement This Period

624.30

 Refund or Disposal of Excess  
Contributions Required Under  
11 C.F.R. 400.63

C

 Full Name (Last, First, Middle Initial)  
HOME BUILDERS ASSOC OF COLO SPRG

 Mailing Address 4885 HILTON PKWY  
STE 100

 City  
COLORADO SPRINGS

 State  
CO

 Zip Code  
80907

 Purpose of Disbursement  
POLLING

Candidate Name

 Category/  
Type

 Office Sought: House  
Senate  
President

 Disbursement For: 2008  
X Primary General  
Other (specify)

State: District

 Transaction ID: SB17.5501  
Date of Disbursement

07 ' 01 ' 2008

Amount of Each Disbursement This Period

3750.00

 Refund or Disposal of Excess  
Contributions Required Under  
11 C.F.R. 400.63

SUBTOTAL of Disbursements This Page (optional)

4374.30

TOTAL This Period (and page this line number only)

F000000

FEC Schedule B (Form 3) (Revised 08/2002)

10044271827